

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**IN RE: PHARMACEUTICAL INDUSTRY AVERAGE  
WHOLESALE PRICE LITIGATION**

**MDL No. 1456**  
C.A. No. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:  
ALL CLASS ACTIONS

Judge Patti B. Saris

**DECLARATION OF DONALD E. HAVILAND, JR., IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL PRODUCTION BY AMGEN, INC.**

I, Donald E. Haviland, Jr., Esquire, hereby declare that:

1. I am co-managing attorney of the New Jersey office of Kline & Specter and an attorney in the Philadelphia office of Kline & Specter, P.C. I am Co-Lead Counsel for the plaintiff, Robert J. Swanston, and the Class in the case of *Swanston v. TAP Pharmaceutical Products Inc., et al.*; C.A. No. CV2002-004988 (Superior Ct., Maricopa Co., Az.) ("*Swanston*").

2. At the request of defendants and by order of the Maricopa County Court, *Swanston* has been designated a "Coordinated State Court Case" pursuant to the governing Case Management Order in MDL 1456.

3. After Defendants' Motions to Dismiss were denied and *Swanston* was designated a "Coordinate State Court Case," Class Counsel in *Swanston* propounded Requests for Production of Documents ("RFPs") on all defendants. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiffs' Request for Production of Documents which were served on all defendants.

4. In response to plaintiff's RFP's, Amgen simply objected and provided no documents. Attached hereto as Exhibit "B" is a true and correct copy of the Defendants' Response. Among

others, Amgen interposed the following objection: “Amgen objects to Plaintiff’s requests as being duplicative, over broad and burdensome in light of the ongoing discovery in MDL 1456. Discovery in this case and the MDL should be coordinated to reduce the burden on Amgen and the other defendants.” Exhibit “B” at p. 3.

5. At the time, the undersigned did not know the extent to which discovery in MDL 1456 had proceeded as against Amgen, yet plaintiff’s counsel proceeded in good faith on the belief that discovery was in fact “ongoing,” as had been represented by Amgen’s counsel.

6. Plaintiff’s counsel sought to get all defendants, including Amgen, to comply with plaintiff’s outstanding discovery requests served in early August 2004. TerriAnne Benedetto, Esquire, of Kline & Specter, P.C. was charged with conducting the requisite “meet and confer” conferences with defendants.

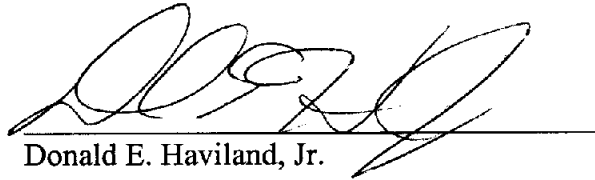
7. Swanston’s counsel engaged counsel for Amgen in a series of “meet and confer” conference and written exchanges which culminated in a letter dated January 31, 2005. Attached hereto as Exhibit “C” is a true and correct copy of a letter dated January 31, 2005 from TerriAnne Benedetto, counsel for plaintiff in *Swanston*, and Steven F. Barley, counsel for Amgen in TAP. Repeatedly, Amgen leveraged its claim that it had “ongoing discovery in MDL 1456” as a means to circumvent its immediate discovery obligations under the Arizona Rules of Civil Procedure which require extensive self-disclosure by all litigants even beyond that which is required under the Federal Rules.

8. Since Amgen’s Motion to Dismiss the *Swanston* Complaint had been denied long before plaintiff’s counsel propounded its discovery requests of Amgen, there was no basis for Amgen to refuse to provide discovery.

9. On January 31, 2005, in a letter response to plaintiff's demand for documents, Amgen's counsel represented that they were "willing to produce documents to the plaintiffs in this case". Attached hereto as Exhibit "D" is a true and correct copy of a letter dated January 31, 2005 from Steven F. Barley to TerriAnne Benedetto. Nevertheless, none were produced.

10. On February 2, 2005, Swanston's counsel wrote back to Amgen's counsel that the parties' "meet and confer" obligations had been met and that Amgen's delay tactics had to come to an end. Attached hereto as Exhibit "E" is a true and correct copy of a letter dated February 2, 2005 from TerriAnne Benedetto to Steven F. Barley. Despite plaintiff counsel's insistence that discovery be produced – as most other defendants had done in response to Swanston's RFPs – Amgen has never produced any documents to plaintiff in *Swanston*.

11. I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct and that this Declaration was prepared in the Commonwealth of Pennsylvania on October 28, 2005.

  
Donald E. Haviland, Jr.

# **EXHIBIT “A”**

8/3/04

1 Harry J. Miller III, Esquire  
 2 AZ Bar No. 014556  
 3 80 East Columbus  
 4 Phoenix, Arizona 85012  
 5 602-264-4965 telephone  
 6 602-277-0144 facsimile

7 Donald E. Haviland, Jr., Esquire  
 8 KLINE & SPECTER, P.C.  
 9 1525 Locust Street, 19<sup>th</sup> Floor  
 10 Philadelphia, PA 19102  
 11 215-735-0957 facsimile

Attorneys for Plaintiff and the Class  
 [Additional Counsel appear on signature page]

**SUPERIOR COURT OF THE STATE OF ARIZONA  
 IN AND FOR THE COUNTY OF MARICOPA**

**ROBERT J. SWANSTON**, individually and  
 on behalf of himself and all others similarly situated,  
 Plaintiff,

v.

TAP Pharmaceutical Products Inc.; Abbott Laboratories;  
 Takeda Chemical Industries, Ltd.; Zeneca, Inc.; AstraZeneca  
 Pharmaceuticals LP; AstraZeneca LP; AstraZeneca PLC;  
 Pharmacia Corporation; Pharmacia & Upjohn, Inc.; Monsanto  
 Company; G.D. Searle; Johnson & Johnson; Ethicon  
 Endo-Surgery, Inc.; Indigo Laser Corporation; Alza  
 Corporation; Centocor, Inc.; Ortho Biotech; Bayer Corporation;  
 Wyeth; Wyeth Pharmaceuticals; Amgen, Inc.; Immunex  
 Corporation; Aventis Pharmaceuticals, Inc.; Aventis Behring  
 L.L.C.; Hoechst Marion Roussel, Inc.; Baxter International  
 Inc.; Baxter Healthcare Corporation; Boehringer Ingelheim  
 Corporation; Ben Venue Laboratories, Inc.; Bedford  
 Laboratories; Roxane Laboratories, Inc.; Bristol-Myers Squibb  
 Company; Oncology Therapeutics Network Corporation;  
 Apothecon, Inc.; Fujisawa Healthcare, Inc.; Fujisawa USA,  
 Inc.; GlaxoSmithKline, P.L.C.; SmithKline Beecham  
 Corporation; Glaxo Wellcome, Inc.; Schering-Plough  
 Corporation; Warrick Pharmaceuticals Corporation; Sicor,  
 Inc.; Gensia Sicor Pharmaceuticals, Inc.; Dey, Inc.; David Jett  
 and Jane Doe Jett; Christopher Coleman and Jane Doe  
 Coleman; Scott Hidalgo and Amanda Hidalgo; Michael  
 Gendelman and Jane Doe Gendelman; Eddy James Hack and  
 Jane Doe Hack; Kimberlee Chase and John Doe Chase; Janice  
 M. Swirski and John Doe Swirski; Donna Tom and John Doe  
 Tom; David Guido and Jane Doe Guido; Henry Van Mourik  
 and Jane Doe Van Mourik; and Alan MacKenzie and Jane Doe  
 MacKenzie; Does 1-50; ABC Corporations 1-50; and XYZ  
 Partnerships and Associations 1-50,  
 Defendants.

CAUSE NO. CV2002-004988

**REQUEST FOR  
 PRODUCTION OF  
 DOCUMENTS DIRECTED  
 TO ALL CORPORATE  
 DEFENDANTS**

CLASS ACTION

(Jury Trial Demanded)

(Assigned to the Honorable  
 Rebecca A. Albrecht)

TO: ALL CORPORATE DEFENDANTS, NAMELY, TAP Pharmaceutical Products Inc.; Abbott  
 Laboratories; Takeda Chemical Industries, Ltd.; Zeneca, Inc.; AstraZeneca Pharmaceuticals LP;

1 AstraZeneca LP; AstraZeneca PLC; Pharmacia Corporation; Pharmacia & Upjohn, Inc.; Monsanto  
 2 Company; G.D. Searle; Johnson & Johnson; Ethicon Endo-Surgery, Inc.; Indigo Laser Corporation; Alza  
 3 Corporation; Centocor, Inc.; Ortho Biotech; Bayer Corporation; Wyeth; Wyeth Pharmaceuticals; Amgen,  
 4 Inc.; Immunex Corporation; Aventis Pharmaceuticals, Inc.; Aventis Behring L.L.C.; Hoechst Marion  
 5 Roussel, Inc.; Baxter International Inc.; Baxter Healthcare Corporation; Boehringer Ingelheim  
 6 Corporation; Ben Venue Laboratories, Inc.; Bedford Laboratories; Roxane Laboratories, Inc.; Bristol-  
 7 Myers Squibb Company; Oncology Therapeutics Network Corporation; Apothecon, Inc.; Fujisawa  
 8 Healthcare, Inc.; Fujisawa USA, Inc.; GlaxoSmithKline, P.L.C.; SmithKline Beecham Corporation;  
 9 Glaxo Wellcome, Inc.; Schering-Plough Corporation; Warrick Pharmaceuticals Corporation; Sicor, Inc.;  
 10 Gensia Sicor Pharmaceuticals, Inc.; Dey, Inc., and their attorneys,

11  
 12 Pursuant to Rule 34 of the Arizona Rules of Civil Procedure, Robert J. Swanston and his  
 13 attorneys request that you produce, within forty (40) days from the date of service hereof, at the law  
 14 offices of Kline & Specter, A Professional Corporation, 1525 Locust Street, 19<sup>th</sup> Floor, Philadelphia,  
 15 PA 19102, and that you permit Robert J. Swanston, through his counsel or persons acting under his  
 16 direction, to inspect and copy, the following documents or things.

#### 17 DEFINITIONS

18  
 19 For purposes of this Request, the following terms have the meanings indicated:

20  
 21 A. Any reference to any corporation or entity includes the present and former officers,  
 22 executives, partners, directors, trustees, employees, agents, representatives and all other persons  
 23 acting or purporting to act on behalf of the corporation or entity, and also its subsidiaries, affiliates,  
 24 division, predecessors and successors.

25  
 26 B. "Document" refers to any written, printed, typed, recorded, or graphic matter,  
 27 however produced or reproduced, and any other data compilation from which information can be  
 28 obtained, translated, if necessary, to a reasonably usable form when translation is practicably

1 necessary, and includes without limiting the generality of the foregoing, statements, memoranda,  
2 correspondence, telegrams, accounting and financial records, notes, agreements, drafts, instruments,  
3 computer print-outs, e-mail, magnetic tapes, computer disks, reports, diagrams, maps, pictures, film,  
4 invoices, contracts, outlines, books or pamphlets, bulletins, directives, diaries, job notebooks, or  
5 deposition transcripts. In addition, the term includes any copy which differs in any respect from the  
6 original or other version of the document such as copies containing notations, insertions, corrections,  
7 or any other variations.  
8

9 C. "Person" refers to any individual, corporation, partnership, joint venture, firm,  
10 association, proprietorship, agency, board, authority, commission, or any other business or legal  
11 entity.  
12

13 D. "Communications" refers to any manner or means of a disclosure, transfer, or  
14 exchange of information whether orally or by document or whether face-to-face, by telephone, mail,  
15 personal delivery, or otherwise.  
16

17 E. "You" or "your" refers to the person(s) to whom this request is directed and any  
18 agents, investigators, attorneys, accountants, engineers, employees or other representatives of any  
19 kind whatsoever and all information within the knowledge of any and all of the above is to be  
20 divulged.  
21

22 F. "Customers" refers to doctors, medical practices, hospitals, PBMs, health care  
23 facilities, and any other person or organization with which you transact business regarding the  
24 Subject Drugs.  
25

26 G. "Subject Drugs" refers to any prescription drug manufactured, marketed, or sold,  
27 either directly or indirectly, by you or your intermediary or intermediaries or your co-defendants in  
28 this case, within the state of Arizona.

1 H. "Related Case" refers to any other lawsuit in which you are or were a party, which  
2 involved in whole or in part issues concerning your marketing practices and/or the pricing of any  
3 Subject Drug.  
4

5 **INSTRUCTIONS**

6 A. Unless otherwise specified, the documents requested herein encompass all documents  
7 that are or were within your possession, custody or control. This request is not limited to documents  
8 prepared by you, but rather encompasses all documents described regardless of source. If any  
9 document requested herein no longer exists, or no longer is within your possession, custody or  
10 control or is not produced by you because of a claim of privilege or for any other reason, then  
11 identify such document, state the reason for withholding it and state the present or last known  
12 location of such document.  
13

14 B. As to each such document produced, indicate the specific request or requests pursuant  
15 to which you have produced it.

16 C. "Identify" a document means to: (1) state the nature of the document, *i.e.*, letter,  
17 memoranda, notes, etc.; (2) the author of the document; (3) the date of the document; (4) a summary  
18 of the information contained in the document; and (5) the name and last known address of all  
19 persons who have knowledge of its contents, in full or in part.  
20

21 D. In the event you seek to withhold or do withhold any document, in whole or in part,  
22 on the basis that it is not subject to discovery, produce a list of all such documents and, as to each  
23 such document, state: (1) the name of each author, writer, sender or initiator of the document; (2)  
24 the name of each recipient, addressee or party to whom such document was sent or intended to be  
25 sent; (3) the name of each and every person who received a copy of the document; (4) the date of  
26 the document or, if no date appears on the document, when the document was prepared; (5) the title  
27  
28



1 of the document, or if it has no title then such other description of the document; and (6) the grounds  
2 claimed for withholding the document from discovery (*i.e.*, any claim of privilege, work product,  
3 or any other recognized grounds), and the factual basis for such claims.

4  
5 **DOCUMENTS TO BE PRODUCED**

6 1. All Documents that identify any patients, or customers, or other entities who have  
7 purchased, received or have been prescribed any Subject Drug manufactured, marketed, sold or  
8 distributed by you.

9 2. Documents sufficient to show all methodologies, strategy or reasoning you used to  
10 calculate and set the amounts your customers or intermediaries paid for Subject Drugs, including  
11 any financial or other incentives and any specially negotiated rates.

12 3. All contracts between you and any customers or intermediaries in which the pricing  
13 for prescription drugs is based in whole or in part on AWP.

14 4. All documents concerning efforts by you to influence legislation, regulations, or  
15 agency practices regarding the use of the Average Wholesale Price ("AWP") for Subject Drugs, and  
16 to keep such efforts confidential, secret and/or non-public.

17 5. All documents, including directories and organizational charts, sufficient to show the  
18 organization or inter-relation of each division, department, unit or subdivision of your company and  
19 all management personnel in your company who had any responsibility with respect to the  
20 development, production, manufacture, distribution, marketing, promotion, pricing or sale of the  
21 Subject Drugs, including, without limitation, officers, directors, managers, supervisors, team leaders  
22 and committee chairs.  
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1           6. Documents referring or relating to any meetings or communications between you and  
2 any other person or entity including, but not limited to, other defendants, other drug companies or  
3 consultants concerning AWP in any way.

4           7. All documents, including without limitation, government reports, news articles, white  
5 papers, studies, analyses or written communications, relating or referring to any definition or  
6 meaning of industry pricing terms concerning Subject Drugs, such as AWP, Wholesale Acquisition  
7 Cost ("WAC"), Estimated Acquisition Cost ("EAC"), or actual acquisition cost.

8           8. All documents produced by you in any litigation, government investigation or  
9 administrative proceeding relating to (a) the use of AWP in Subject Drug insurance benefits or  
10 coverage; (b) the use of AWP in the amounts that customers charge their patients; (c) the  
11 distribution to customers or intermediaries of rebates or financial incentives relating to Subject  
12 Drugs; (d) decisions concerning which Subject Drugs to place on formularies; (e) terms, conditions  
13 and rates available to your regular customers or intermediaries for Subject Drugs; and (f) changes  
14 over time in the terms, conditions and rates available to your regular customers or intermediaries  
15 for Subject Drug benefits or coverage.

16           9. All documents relating to or reflecting your awareness of, or provision by you of, any  
17 "financial inducements" including, but not limited to, trips to resorts, rounds of golf, dinners,  
18 honoraria, Continuing Medical Education courses, consultantships, textbooks, television sets, VCRs,  
19 and other items of gifts of value to customers and intermediaries for prescribing Subject Drugs.

20           10. All documents you have introduced or relied upon in any Related Case at any hearing  
21 or in any pleading, motion or other court filing concerning the issue of class certification, and all  
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documents you intend to introduce or rely upon at any hearing regarding Plaintiff's Class Certification Motion or in connection with further briefing of that Motion.

Dated: August 3, 2004

Respectfully submitted,

/s/ Donald E. Haviland, Jr., Esquire  
[donald.haviland@klinespecter.com](mailto:donald.haviland@klinespecter.com)  
Donald E. Haviland, Jr., Esquire  
**KLINE & SPECTER, P.C.**  
1525 Locust Street, 19<sup>th</sup> Floor  
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**HARRY J. MILLER, P.L.L.C.**  
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Phoenix, AZ 85012  
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Chad L. Schexnayder, Esquire  
**JENNINGS, HAUG & CUNNINGHAM, L.L.P.**  
2800 North Central Avenue, Suite 1800  
Phoenix, AZ 85004-1049  
(602) 234-7800 telephone

Kent M. Williams, Esquire  
**GIEBEL, GILBERT, WILLIAMS & KOHL, P.L.L.P.**  
1300 Godward Street, N.E., Suite 6200  
Minneapolis, MN 55413  
(651) 633-9000 telephone  
(651) 639-1551 facsimile

Marvin K. Blount, Jr., Esquire  
**THE BLOUNT LAW FIRM, P.L.L.C.**  
400 West First Street  
Greenville, NC 27834  
(252) 752-6000 telephone  
(255) 752-2174 facsimile

Lewis B. April, Esquire  
**COOPER LEVENSON APRIL  
NIEDELMAN & WAGENHEIM, P.A.**  
1125 Atlantic Avenue - Third Floor  
P.O. Box 1125  
Atlantic City, NJ 08404-1125  
(609) 344-0939 facsimile

**ATTORNEYS FOR PLAINTIFF AND THE CLASS**

ORDERLUPRON MASTER - (200200)/Lapron - AZ - (200204)/Pleadings/Request for Production of Docs Directed to CORPORATE DEFS.sxd

**Review and Submit**

Filing ID: 3989681 Cancel Save

CV2002004988 Swanston vs T A P Pharmaceutical Products Inc et al AZ Maricopa County Superior Court

**IMPORTANT: Your filing has not yet been submitted.****When you have finished reviewing, select Submit Filing below.**

Filing ID: 3989681  
 Filed by: Donald E Haviland, Kline & Specter  
 Authorized by: Donald E Haviland, Kline & Specter [Edit](#)

Court: AZ Maricopa County Superior Court  
 Division/Courtroom: N/A  
 Case Class: Complex Civil  
 Case Type: Tort Non-Motor Vehicle - Other  
 Case Number: CV2002004988  
 Case Name: Swanston vs T A P Pharmaceutical Products Inc et al

Filing Option: Serve Only - Public [Edit](#)**! This transaction will be sent Serve Only.**Billing Reference: Swanston 200204 [Edit](#)Documents List [Edit](#)**1 Document(s)****Attached Document, 8 Pages Document ID: 2290571**[View Original](#) [View PDF](#)

Filing Type: Discovery Access: Public Filing Fee: \$0 Linked:

**Document title:**

Plaintiffs Request for Production of Documents Directed to All Corporate Defendants

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Party	Party Type	Attorney	Firm	Attorney Type
Swanston, Robert J	Plaintiff	Haviland, Donald E	Kline & Specter	Attorney in Charge

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Delivery Option	Party	Party Type	Attorney	Firm	Attorney Type	Method
Service	Abbott Laboratories	Defendant	Papetti, Randy S	Lewis & Roca LLP	Pro Hac Vice	Online
Service	Abbott Laboratories	Defendant	Buchman, Joshua T	McDermott Will & Emery LLP-Chicago	Attorney in Charge	U.S. Mail
Service	Amgen Inc	Defendant	Gordon, Andrew S	Coppersmith Gordon Schermer Owens & Nelson PLC	Attorney in Charge	Online
Service	Amgen Inc	Defendant	Jorgensen, James D	Coppersmith Gordon Schermer Owens & Nelson PLC	Attorney in Charge	Online
Service	Amgen Inc	Defendant	Young, Joseph H	Hogan & Hartson LLP-Baltimore	Pro Hac Vice	Online
Service	Amgen Inc	Defendant	Barley, Steven F	Hogan & Hartson LLP-Baltimore	Pro Hac Vice	Online
Service	Apothecon Inc	Defendant	Brandon, George	Squire Sanders & Dempsey LLP-Phoenix	Attorney in Charge	Online
Service	Apothecon Inc	Defendant	Marconi, Andrea	Squire Sanders & Dempsey LLP-Phoenix	Attorney in Charge	Online
Service	Astra Zeneca	Defendant	Maledon, William J	Osborn Maledon PA	Attorney in	Online

	Pharmaceuticals LP				Charge	
Service	Astra Zeneca Pharmaceuticals LP	Defendant	Weaver, Linda D	Osborn Maledon PA	Attorney in Charge	Online
Service	Astra Zeneca Pharmaceuticals LP	Defendant	Wise, D Scott	Davis Polk & Wardwell	Attorney in Charge	Online
Service	Astra Zeneca Pharmaceuticals LP	Defendant	Harris, Kimberley D	Davis Polk & Wardwell	Attorney in Charge	Online
Service	Aventis Behring LLC	Defendant	Nussbaum, William D	Hogan & Hartson LLP-DC	Pro Hac Vice	Online
Service	Aventis Behring LLC	Defendant	Overton, Pamela M	Greenberg Traurig LLP-Main Account	Attorney in Charge	Online
Service	Aventis Pharmaceuticals Inc	Defendant	Schleifman, Paul S	Shook Hardy & Bacon LLP-DC	Attorney in Charge	Online
Service	Aventis Pharmaceuticals Inc	Defendant	Overton, Pamela M	Greenberg Traurig LLP-Main Account	Attorney in Charge	Online
Service	Bayer Corp	Defendant	Dunne, Kimberly	Sidley Austin Brown & Wood LLP-Los Angeles	Attorney in Charge	Online
Service	Bayer Corp	Defendant	Raskin, Richard D	Sidley Austin Brown & Wood LLP-Chicago	Attorney in Charge	Online
Service	Bayer Corp	Defendant	Frisbie, Laci	Sidley Austin Brown & Wood LLP-Los Angeles	Attorney in Charge	Online
Service	Bayer Corp	Defendant	Franks, Timothy J	Perkins Cole Brown & Bain PA	Attorney in Charge	Online
Service	Bayer Corp	Defendant	Thumma, Sam	Perkins Cole Brown & Bain PA	Pro Hac Vice	Online
Service	Boehringer Ingelheim Corp	Defendant	Rogers, Doug L	Vorys Sater Seymour & Pease LLP-Columbus	Pro Hac Vice	Online
Service	Boehringer Ingelheim Corp	Defendant	Coval, Paul J	Vorys Sater Seymour & Pease LLP-Columbus	Attorney in Charge	Online
Service	Boehringer Ingelheim Corp	Defendant	Miller, Darrell A H	Vorys Sater Seymour & Pease LLP-Columbus	Attorney in Charge	Online
Service	Boehringer Ingelheim Corp	Defendant	Wauro, Darlene M	Roshka Heyman & DeWulf PLC	Attorney in Charge	Online
Service	Boehringer Ingelheim Corp	Defendant	DeWulf, John E	Roshka Heyman & DeWulf PLC	Attorney in Charge	Online
Service	Bristol Myers Squibb	Defendant	Brandon, George	Squire Sanders & Dempsey LLP-Phoenix	Attorney in Charge	Online
Service	Bristol Myers Squibb	Defendant	Edwards, Steven M	Hogan & Hartson LLP-New York	Pro Hac Vice	Online
Service	Bristol Myers Squibb	Defendant	Tretter, Lyndon M	Hogan & Hartson LLP-New York	Pro Hac Vice	Online
Service	Bristol Myers Squibb	Defendant	Marconi, Andrea	Squire Sanders & Dempsey LLP-Phoenix	Attorney in Charge	Online
Service	Coleman, Christopher	Defendant	No_Answer_on_File	Firm TBD	Attorney in Charge	U.S. Mail
Service	Dey Inc	Defendant	Robben, Philip D	Kelley Drye & Warren LLP-New York	Pro Hac Vice	Online
Service	Dey Inc	Defendant	Tower, Philip C	Meyer Hendricks & Bivens PA	Pro Hac Vice	Online
Service	Ethicon Endo Surgery Inc	Defendant	Schau, Andrew	Patterson Belknap Webb & Tyler	Attorney in Charge	Online
Service	Fujisawa Healthcare Inc	Defendant	Aronson, Martin A	Morrill & Aronson PLC	Attorney in Charge	Online
Service	Fujisawa Healthcare Inc	Defendant	Cleaveland, William D	Morrill & Aronson PLC	Attorney in Charge	Online
Service	Fujisawa Healthcare Inc	Defendant	Hurst, Andrew L	Reed Smith LLP-Washington	Pro Hac Vice	Online
Service	Fujisawa Healthcare Inc	Defendant	Scott, Michael T	Reed Smith LLP-Philadelphia	Pro Hac Vice	U.S. Mail
Service	Fujisawa Healthcare Inc	Defendant	McGuan, Kathleen H	Reed Smith LLP-Washington	Pro Hac Vice	Online

U.S.

Service	Gendelman, Michael	Defendant	Riley, John E	Vaira & Riley PC	Pro Hac Vice	Mail
Service	Gendelman, Michael	Defendant	Hall, Dennis Linly	Beshears Wallwork Bellamy Chartered	Attorney in Charge	Online
Service	Hack, Eddy James	Defendant	Greene, Charles M	Greene, Charles M PA	Pro Hac Vice	U.S. Mail
Service	Immunex Corp	Defendant	Burman, David J	Perkins Coie LLP-Seattle	Pro Hac Vice	Online
Service	Immunex Corp	Defendant	O'Sullivan, Kathleen M	O'Sullivan, Kathleen M	Pro Hac Vice	U.S. Mail
Service	Immunex Corp	Defendant	Philippides, Zoe	Perkins Coie LLP-Seattle	Pro Hac Vice	Online
Service	Immunex Corp	Defendant	Kennedy, Michael K	Gallagher & Kennedy PA	Attorney in Charge	Online
Service	Jett, David	Defendant	Casale, Robert M	Casale, Robert M	Pro Hac Vice	U.S. Mail
Service	Johnson & Johnson Co	Defendant	Schau, Andrew	Patterson Belknap Webb & Tyler	Attorney in Charge	Online
Service	Johnson & Johnson Co	Defendant	Pryor, Mary G	Cavanagh Law Firm	Attorney in Charge	Online
Service	Pharmacia Corp	Defendant	Stempel, Scott A	Morgan Lewis & Bockius LLP-DC	Attorney in Charge	Online
Service	Pharmacia Corp	Defendant	Dodds, John C	Morgan Lewis & Bockius- Philadelphia	Attorney in Charge	Online
Service	Pharmacia Corp	Defendant	Baranski, Jason E	Morgan Lewis & Bockius- Philadelphia	Attorney in Charge	Online
Service	Pharmacia Corp	Defendant	Everett, John Clayton	Morgan Lewis & Bockius LLP-DC	Attorney in Charge	Online
Service	Pharmacia Corp	Defendant	Halpern, Barry	Snell & Wilmer LLP-Phoenix	Attorney in Charge	Online
Service	Pharmacia Corp	Defendant	Hackett, Stephanie	Snell & Wilmer LLP-Phoenix	Attorney in Charge	Online
Service	Schering Plough Corp	Defendant	Montgomery, John T	Ropes & Gray	Attorney in Charge	Online
Service	Schering Plough Corp	Defendant	O'Connor, Brien T	Ropes & Gray	Attorney in Charge	Online
Service	Schering Plough Corp	Defendant	Halaby, Andy	Snell & Wilmer LLP-Phoenix	Attorney in Charge	Online
Service	Sicor Inc	Defendant	Jones, Lydia	Jennings Strouss & Salmon PLC	Attorney in Charge	Online
Service	Smithkline Beecham Corp	Defendant	Lodge, Kira D	Bryan Cave LLP-Phoenix	Attorney in Charge	Online
Service	Smithkline Beecham Corp	Defendant	Ott, Rodney Wayne	Bryan Cave LLP-Phoenix	Attorney in Charge	Online
Service	Smithkline Beecham Corp	Defendant	Herold, Fred	Dechert Price & Rhoads	Attorney in Charge	Online
Service	Smithkline Beecham Corp	Defendant	Lynch, Mark H	Covington & Burling	Pro Hac Vice	Online
Service	Smithkline Beecham Corp	Defendant	Posner, Ethan M	Covington & Burling	Pro Hac Vice	Online
Service	Smithkline Beecham Corp	Defendant	Dove, Ronald G	Covington & Burling	Pro Hac Vice	Online
Service	Smithkline Beecham Corp	Defendant	Shely, Robert W	Bryan Cave LLP-Phoenix	Attorney in Charge	Online
Service	Swanston, Robert J	Defendant	Williams, Kent M	Giebel Gilbert Williams & Kohl PLLP	Pro Hac Vice	Online
Service	Swanston, Robert J	Defendant	Blount, Marvin K	Blount Law Firm PLLC	Pro Hac Vice	U.S. Mail
Service	Swanston, Robert J	Defendant	April, Lewis B	Cooper Levenson April Niedelman & Wagenheim	Pro Hac Vice	Online
Service	Swanston, Robert J	Plaintiff	Miller, Harry J	Miller, Harry J PLLC	Attorney in Charge	Online
Service	T A P Pharmaceutical Products Inc	Defendant	Burke, Timothy	Fennemore Craig	Attorney in Charge	Online
	T A P Pharmaceutical				Attorney in	U.S.

Service	Products Inc	Defendant	Russo, Lee Ann	Jones Day-Chicago	Charge	Mail
Service	Takeda Chemical Industries Ltd	Defendant	O'Neal, John Maston	Quarles & Brady Streich Lang LLP	Attorney in Charge	Online
Service	Takeda Chemical Industries Ltd	Defendant	Porcelli, Anthony C	Jenner & Block LLP-Chicago	Attorney in Charge	Online
Service	Takeda Chemical Industries Ltd	Defendant	Stauffer, Robert R	Jenner & Block LLP-Chicago	Attorney in Charge	Online
Service	Takeda Chemical Industries Ltd	Defendant	Martin, Don P	Quarles & Brady Streich Lang LLP	Attorney in Charge	Online
Service	Wyeth Inc	Defendant	Leonard, Jeffrey S	Sacks Tierney PA	Attorney in Charge	Online
Service	Wyeth Inc	Defendant	Holden, Craig S	Ober Kaler Grimes & Shriver-Baltimore	Attorney in Charge	Online

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# **EXHIBIT “B”**

Lupron AZ  
9/13/04

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Steven F. Barley (admitted *pro hac vice*)

Attorneys for Defendant Amgen Inc.

**SUPERIOR COURT OF ARIZONA**

**MARICOPA COUNTY**

ROBERT J. SWANSTON, individually and on  
behalf of himself and all others similarly situated,  
Plaintiff,

v.

TAP PHARMACEUTICAL PRODUCTS INC.;  
et al.,

Defendants.

No. CV2002-004988

**Amgen Inc.'s Objections and  
Responses to Plaintiff's Request  
For Production Of Documents  
Directed To All Corporate  
Defendants**

(Assigned to the  
Honorable Rebecca A. Albrecht)

Pursuant to Rule 34 of the Arizona Rules of Civil Procedure, Defendant Amgen Inc.

("Amgen"), by its undersigned counsel, hereby objects and responds to Plaintiff's Request For  
Production Of Documents Directed To All Corporate Defendants.

**PRELIMINARY STATEMENT**

1. These objections and responses are made solely for the purposes of this action. Each objection and response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such document requests were asked of, or statements contained herein were made by, a witness present and testifying in Court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

2. Amgen's responses and answers shall not be deemed to constitute admissions:

- a. that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence; or
- b. that any statement or characterization in Plaintiff's Request for Production of Documents Directed to All Corporate Defendants is accurate or complete.

3. Amgen's responses are made based upon reasonable and diligent investigation conducted to date. Discovery and investigation in this matter are ongoing and Amgen reserves the right to amend its responses and to raise any additional objections it may have in the future. These responses are made based upon the typical or usual interpretation of words contained in Plaintiff's Request For Production Of Documents Directed To All Corporate Defendants, unless a specific definition or instruction has been provided.

4. Amgen is responding on its own behalf, and not on behalf of Immunex Corporation, a subsidiary, which has been named as a separate defendant in these proceedings and is separately represented by counsel.

5. Amgen's responses to Plaintiff's Request For Production Of Documents Directed To All Corporate Defendants are submitted without prejudice to Amgen's right to

produce evidence of any subsequently discovered fact. Amgen accordingly reserves its right to provide further responses and answers as additional facts are ascertained. Subject to the foregoing, which is incorporated into each and every response and answer set forth below; Amgen responds as follows:

**GENERAL OBJECTIONS**

Amgen objects generally to Plaintiff's Request For Production Of Documents

Directed To All Corporate Defendants as follows:

1. Amgen objects to each of Plaintiff's requests as seeking discovery beyond that authorized by the Court's Order of February 17, 2004, which stated that all "discovery except for discovery regarding the Motion for Class Certification and those with regard to issues of jurisdiction shall be stayed." On August 23, 2004, the Court stated that "discovery will continue on the issues of class certification."

2. Amgen objects to Plaintiff's "Definitions" and "Instructions" to the extent Plaintiff intends to expand upon or alter Amgen's obligations under the Arizona Rules of Civil Procedure.

3. Amgen objects to Plaintiff's requests as being duplicative, over broad, and burdensome in light of the ongoing discovery in MDL 1456. Discovery between this case and the MDL should be coordinated to reduce the burden on Amgen and the other defendants.

4. Amgen objects to each request to the extent that it calls for the production of documents or information not relevant to the issues in this action or that is not reasonably calculated to lead to the discovery of admissible evidence.

5. Amgen objects to each request as over broad, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that the requests

are unlimited in temporal and geographic scope.

6. Amgen objects to Plaintiff's definitions of "Communications," "Document," "You" or "your", "Customers," "Subject Drugs," and "Related Case" on the grounds that they are vague, ambiguous, overbroad, burdensome, and encompass materials that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. Insofar as any request seeks information to which the foregoing objections to Plaintiff's Definitions and Instructions apply, Amgen's failure to note particular objections to Plaintiff's Definitions and Instructions in the Specific Objections below shall not constitute a waiver of those or other objections to Plaintiff's Definitions and Instructions with respect to any individual request.

8. Amgen objects to the extent that any request seeks information that is protected from disclosure by the work product doctrine, the attorney-client, accountant-client, consulting expert, or investigative privileges, by any common interest or joint defense agreement, or by any other applicable privilege or protection.

9. Amgen objects to each request to the extent it seeks information and documents protected by, or whose disclosure is governed by, confidentiality or other protective agreement with third-parties, or the confidentiality restrictions imposed by the Federal Trade Commission in its Decision and Order dated September 3, 2002, *In the matter of Amgen Inc. and Immunex Corporation*, Docket No. C-4056 ("the FTC Order").

10. Amgen objects to each request to the extent that it seeks disclosure of information that is a matter of public record, is equally available to Plaintiff, or is already in Plaintiff's possession.

11. Amgen expressly incorporates the above General Objections into each

specific response to the requests set forth below as if set forth in full therein. The response to a request shall not operate as a waiver of any applicable specific or general objection to a request.

### **SPECIFIC OBJECTIONS AND RESPONSES**

#### **Request No. 1:**

All Documents that identify any patients, or customers, or other entities who have purchased, received or have been prescribed any Subject Drug manufactured, marketed, sold or distributed by you.

#### **RESPONSE:**

In addition to the General Objections set forth above, Amgen objects to Request No. 1 on the grounds that it is overbroad, burdensome, and calls for production of documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent that the request is unlimited in time and scope. Amgen further objects that the terms "patients" "customers," "received," "marketed," and "distributed" are vague and ambiguous. Amgen also objects to this request to the extent it calls for documents protected from disclosure by law or regulation and on the ground that certain of the documents called for in the request are more appropriately obtained from third-parties. To the extent this request seeks documents related to the merits of this case, Amgen objects to the request on the grounds that discovery is currently limited to class certification issues only.

#### **Request No. 2:**

Documents sufficient to show all methodologies, strategy or reasoning you used to calculate and set the amounts your customers or intermediaries paid for Subject Drugs, including any financial or other incentives and any specially negotiated rates.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 2 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 3:

All contracts between you and any customers or intermediaries in which the pricing for prescription drugs is based in whole or in part on AWP.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 3 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 4:

All documents concerning efforts by you to influence legislation, regulations, or agency practices regarding the use of the Average Wholesale Price ("AWP") for Subject Drugs, and to keep such efforts confidential, secret and/or non-public.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 4 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 5:

All documents, including directories and organizational charts, sufficient to show the organization or inter-relation of each division, department, unit or subdivision of your company and all management personnel in your company who had any responsibility with respect to the development, production, manufacture, distribution, marketing, promotion, pricing or sale of the Subject Drugs, including, without limitation, officers, directors, managers, supervisors, team leaders and committee chairs.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 5 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 6:

Documents referring or relating to any meetings or communications between you and any other person or entity including, but not limited to, other defendants, other drug companies or consultants concerning AWP in any way.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 6 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 7:

All documents, including without limitation, government reports, news articles, white papers, studies, analyses or written communications, relating or referring to any definition or meaning of industry pricing terms concerning Subject Drugs, such as AWP, Wholesale Acquisition Cost ("WAC"), Estimated Acquisition Cost ("EAC"), or actual acquisition cost.



RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 7 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 8:

All documents produced by you in any litigation, government investigation or administrative proceeding relating to (a) the use of AWP in Subject Drug insurance benefits or coverage; (b) the use of AWP in the amounts that customers charge their patients; (c) the distribution to customers or intermediaries of rebates or financial incentives relating to Subject Drugs; (d) decisions concerning which Subject Drugs to place on formularies; (e) terms, conditions and rates available to your regular customers or intermediaries for Subject Drugs; and (f) changes over time in the terms, conditions and rates available to your regular customers or intermediaries for Subject Drug benefits or coverage.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 8 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

Request No. 9:

All documents relating to or reflecting your awareness of, or provision by you of, any "financial inducements" including, but not limited to, trips to resorts, rounds of golf, dinners, honoraria, Continuing Medical Education courses, consultantships, textbooks, television sets, VCRs, and other items of gifts of value to customers and intermediaries for prescribing Subject Drugs.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 9 in its entirety as it seeks documents unrelated to class certification in contravention of the Court's August 23, 2004 Order, which limited discovery to class certification issues. Amgen reserves its right to object to this request on other grounds if, and when, discovery on the merits goes forward.

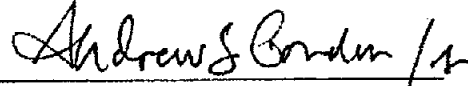
Request No. 10:

All documents you have introduced or relied upon in any Related Case at any hearing or in any pleading, motion or other court filing concerning the issue of class certification, and all documents you intend to introduce or rely upon at any hearing regarding Plaintiff's Class Certification Motion or in connection with further briefing of that Motion.

RESPONSE:

In addition to the General Objections set forth above, Amgen objects to Request No. 10 on the grounds that it is vague, ambiguous, over broad, and burdensome and is not reasonably calculated to lead to the discovery of admissible evidence in that no responsive time period is defined. Subject to, and without waiving these objections, Amgen states that no responsive documents currently exist. Amgen will supplement its response as appropriate.

By:



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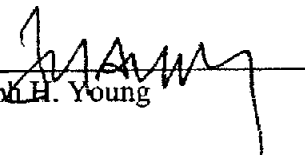
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Joseph H. Young

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January 31, 2005

VIA FACSIMILE

Steven F. Barley, Esquire  
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Re: *Swanston v. TAP Pharmaceutical Products, Inc., et al.*

Dear Mr. Barley:

In follow-up to our meet and confers and exchanges of email in October and November, please advise me as to your position regarding document production by your client, Amgen, in this case. When we last spoke in November, you indicated that you wanted to wait and see how Judge Albrecht ruled on the issue of coordination. As Judge Albrecht ruled in November that this case would be designed as a coordinated state court case, I expect you have determined by now whether your position respecting document production has changed as a result of that order.

I understand that Amgen has not yet produced documents in MDL 1456 because of a motion to dismiss which you have pending. However, Amgen has yet to produce any documents in connection with the discovery requests propounded upon Amgen in this case in which Amgen's motion to dismiss was denied. I believe that we have met our meet and confer obligations and write this letter to give you an opportunity to set forth your current position on whether or not you intend to produce any documents to plaintiff in this case before seeking relief from the Court.

Very truly yours,



**TERRIANNE BENEDETTO**

TAB/jn

\* \* \* COMMUNICATION RESULT REPORT ( JAN. 31. 2005 11:24AM ) \* \* \*

FAX HEADER: KLINE-SPECTER-P. C.

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*A Professional Corporation*THE NINETEENTH FLOOR  
1525 LOCUST STREET  
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January 31, 2005

Sender: Donald E. Haviland, Jr., Esquire/TerriAnne Benedetto, Esquire/  
Louis C. Ricciardi, Esquire/Roberta A. Golden, EsquireFile: *Swanson v. TAP Pharmaceutical Products, Inc., et al*

Our File No.: 200204

**RECIPIENTS**

COUNSEL FOR:

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Pages: 2 (including cover).Comments: Original ☐ will ☒ will not follow.

If you do not receive all the pages, please call: Jennifer at 215-772-2482.

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# **EXHIBIT “D”**

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January 31, 2005

**VIA FACSIMILE (215) 735-0957**

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Re: *Swanston v. TAP Pharmaceutical Products, Inc., et al.*

Dear TerriAnne:

I am in receipt of your letter of earlier today. As you point out, when we last spoke concerning the document production requests, we had agreed to await Judge Albrecht's ruling on the motion to designate the case as a coordinated state case before deciding how to proceed. I understood from our conversations that you would be contacting us following a ruling by Judge Albrecht and we have been waiting to hear from you.

We are willing to produce documents to the plaintiffs in this case. I will give you a call later today or tomorrow to discuss the scope and timing of the production.

Very truly yours,



Steven F. Barley

SFB:jvd

cc: Joseph H. Young, Esquire  
Andrew S. Gordon, Esquire

WASHINGTON, DC

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\\RA-14372\0057-183948-1



# **EXHIBIT “E”**

## KLINE & SPECTER

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[terrienne.benedetto@klinespecter.com](mailto:terrienne.benedetto@klinespecter.com)

February 2, 2005

VIA FACSIMILE

Steven F. Barley, Esquire  
**HOGAN & HARTSON L.L.P.**  
111 South Calvert Street, Suite 1600  
Baltimore, MD 21202

Re: *Swanston v. TAP Pharmaceutical Products, Inc., et al.*

Dear Mr. Barley:

I am in receipt of the voice mail message which you and Mr. Young left for me yesterday. In that voice mail message you indicated that you wanted to set up yet another meet and confer conference call, which you anticipated would take approximately one hour. Please be advised that I am traveling the rest of this week and on Monday and Tuesday of next week and therefore will be unavailable for a conference call.

Irrespective of my unavailability over the next several days, I note that we have spent considerable time meeting and conferring regarding Amgen's discovery responses and refusal to produce any documents. We have had several telephone conversations and composed and exchanged numerous emails. As stated in my January 31, 2005 letter to you, I believe that we already have met our meet and confer obligations. I wrote you that letter only to give you one final opportunity to advise me as to whether Amgen intends to produce any documentation at all in response to plaintiff's discovery requests before I sought relief from the court. I did not and do not intend to set up further conference calls with you on this matter.

Respectfully, I think we have gone back and forth several times on whether or not our requests go to class issues and merits issues and, frankly, it is unclear how we can continue to operate on a bifurcated discovery schedule when all other defendants have acquiesced that this case

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Steven F. Barley, Esquire  
**HOGAN & HARTSON L.L.P.**

February 2, 2005

Page 2

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cannot be bifurcated and also be coordinated with MDL 1456, which is not bifurcated. If you have anything further to state regarding your willingness or unwillingness to produce documents and your bases therefor, I ask you to please do so in written form. The Arizona rules do not require the parties to discuss discovery matters *ad nauseam* before determining that a meeting of the minds cannot be reached and court intervention is required.

Very truly yours,



**TERRIANNE BENEDETTO**

TAB/jn

G:\DEI\PLUPRON MASTER - (200260)\Lupron - AZ - (200204)\Letters\Barley, Steve02 (re meet and confer).wpd

\* \* \* COMMUNICATION RESULT REPORT ( FEB. 2. 2005 2:27PM ) \* \* \*

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#### FAX COVER SHEET

February 2, 2005

Sender: Donald E. Haviland, Jr., Esquire/TerriAnne Benedetto, Esquire/  
 Louis C. Ricciardi, Esquire/Roberta A. Golden, Esquire

File: *Swantson v. TAP Pharmaceutical Products, Inc., et al.* Our File No.: 200204

#### RECIPIENTS

COUNSEL FOR:	SD#	TELEPHONE	TELEFAX
Steven Barley, Esquire		410-659-2700	410-539-6981

HOGAN & HARTSON, LLP

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